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4

5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
7

8 BRIAN M. WILSON,
9 Plaintiff,

10 vs.

11 AARGON AGENCY, INC., a Nevada
corporation, DUANE CHRISTY, DOES I -V,
12 inclusive and ROE Corporations VI-X,
inclusive,
13 Defendants.
14

CASE NO.: 2:07-cv-616 LDG (VCF)

**PLAINTIFF'S SEPARATE
STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

15 COMES NOW Plaintiff, BRIAN M. WILSON (hereinafter Plaintiff or "Mr.
16 Wilson"), by and through his attorney, Craig B. Friedberg, and respectfully submits the
17 following separate statement of undisputed facts in support of Plaintiff's motion for
18 partial summary judgment.

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**PLAINTIFF BRIAN WILSON'S
UNCONTROVERTED FACTS:**

No. 1: Defendant Aargon Agency, Inc. ("Aargon") is a "debt collector" as defined by 15 U.S.C. § 1692a(6) of the Fair Debt Collection Practices Act ("FDCPA").

No. 2: Defendant Duane Christy ("Christy") is a debt collectors as defined by 15 U.S.C. § 1692a(6) of the FDCPA.

No. 3: Defendants were retained by Impulse Telecom, a local telephone service provider, concerning an allegedly unpaid account to Mr. Wilson.

No. 4: Mr. Wilson is a "consumer" as defined by 15 U.S.C. § 1692a(3) of the FDCPA

No. 5: The telephone account upon which Defendants were attempting to collect was primarily incurred for personal, family or household purposes.

No. 6: Defendants were assigned Mr. Wilson's account on May 25, 2006. (Facts ¶6).

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1 No. 7: On May 31, 2006, Defendants
2 called Mr. Wilson on the telephone and
3 left a message. The message identified the
4 caller and the collection agency and asked
5 for Mr. Wilson to call back to a telephone
6 number provided in the message.
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10 No. 8: On or about June 1, 2006
11 Defendants mailed their initial letter to
12 Mr. Wilson. The letter noted that
13 Defendants were attempting to collect
14 \$392.63 which they claimed was overdue
15 on an account they indicated Mr. Wilson
16 had with a company called Impulse
17 Telecom. The letter did not explain what
18 type of company Impulse Telecom was,
19 what it did, nor when the alleged account
20 became past due. There was nothing in
21 the letter that would have allowed Mr.
22 Wilson to investigate the legitimacy of the
23 alleged delinquent account.

24 No. 9: On June 7, 2006, Mr. Wilson sent
25 a letter to Defendant Aargon disputing the
26 debt, explaining that he was not familiar
27 with a company named Impulse Telecom,
28 and requesting proof that he owed money
on the account, including past due
invoices and statements, the address to
which the Impulse Telecom service was
provided, and the original work order that
allegedly established service with the
company (hereinafter "dispute letter"). He
also requested that if the Defendants were
unable to provide the information
requested, that they remove the account
from their file, cease all collection
activities against him and to not report
any negative information to any credit
bureau to which they report.

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1 No. 10: Mr. Wilson sent the dispute letter
2 to Defendants via FedEx Ground, for next
3 day delivery. It was delivered and signed
for by Randall McClemy, an Aargon
employee, on June 8, 2006.

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6 No. 11: On June 8, 2006, Defendants
7 called Mr. Wilson looking to collect on the
8 Impulse Telecom account and left another
9 message on Mr. Wilson's answering
machine. The message left was similar to
the one left on May 31.

10
11 No. 12:¹ On June 9, 2006, Mr. Wilson's
12 dispute letter was marked in Defendants'
13 computer system to be scanned in.

14
15 No. 12A: For an unknown reason, the
16 letter was not scanned into the computer
system until June 13, 2006.

17
18
19 No. 13: On June 12, 2006, four (4) days
20 after Defendants received Mr. Wilson's
21 dispute letter, someone from Defendant
Aargon called attempting to collect on the
22 disputed account and left another
23 message on Mr. Wilson's answering
24 machine, similar to the previous two
25 messages left on May 31, 2006 and June
26 8, 2006. Mr. Wilson was disturbed to
27 receive the telephone call and message
from the Defendants because he had not
received anything in the mail responding
to his dispute letter and he had asked in
that letter for Defendants to stop their
collection activity until their response was
mailed to him.

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1 No. 14: On June 16, 2006, eight (8) days
2 after Defendants received Mr. Wilson's
3 dispute letter, and three (3) days after it
4 was scanned into their computer system,
5 Defendants again called Mr. Wilson
6 attempting to collect on the disputed
7 account and left another message similar
8 to the previous three.

9 No. 15: On June 19, 2006, eleven (11)
10 days after Defendants received Mr.
11 Wilson's dispute letter, and six (6) days
12 after it was scanned into their computer
13 system, Defendants again called Mr.
14 Wilson attempting to collect on the
15 disputed account and left another
16 message similar to the previous four.

17 No. 16: On June 22, 2006, fourteen (14)
18 days after Defendants received Mr.
19 Wilson's dispute letter, and nine (9) days
20 after it was scanned into their computer
21 system, Defendants again called Mr.
22 Wilson attempting to collect on the
23 disputed account and left another
24 message similar to the previous five.

25 No. 17: Upon receiving the fifth telephone
26 collection message from Defendants after
27 Mr. Wilson overnighted his dispute letter,
28 Mr. Wilson had finally had enough of the
collection calls from Defendants and
called them back in the late afternoon on
June 22, 2006. Mr. Wilson advised them
that he had sent them, and they had
received, his written dispute letter, which
they had not answered, that the telephone
calls needed to stop and that he was not
going to pay them anything until they sent
him proof that he owed money to Telecom
Impulse. Mr. Wilson was told that the
billing records verifying the account
would be mailed to him.

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1 No. 18: After the telephone conversation
2 Mr. Wilson had with Defendants on June
3 22, 2006, Mr. Wilson still did not receive
4 anything from the Defendants verifying
5 the disputed account, but the telephone
6 calls did stop.

7 No. 19: On August 12, 2006, Mr. Wilson
8 pulled up his credit reports, and much to
9 his dismay, found that Defendants had
10 placed a derogatory tradeline regarding
11 the Impulse Telecom account with both
12 Experian and TransUnion, even though
13 they had never responded to his dispute
14 letter.

15 No. 20: It was Defendants practice and
16 procedure at that time to place accounts
17 they were assigned with Experian and
18 TransUnion if no payments were received
19 from the consumer within thirty (30) days
20 of the assignment.

21 No. 21: Since Mr. Wilson did not pay the
22 disputed account, Defendants sent the
23 information regarding the Impulse
24 Telecom account to Experian and
25 TransUnion no later than August 5, 2006.

26 No. 22: Defendants did not report the
27 account as disputed when they sent their
28 information to Experian and TransUnion.

29 No. 23: On August 14, 2006, Mr. Wilson
30 contacted Experian by email and disputed
31 the Defendants' tradeline, telling Experian
32 that Defendants never responded to his
33 written dispute nor his request for details
34 about the disputed account to
35 demonstrate that he owed Impulse
36 Telecom money.

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4 No 23A: On August 14, 2006, Mr. Wilson
5 contacted TransUnion by email and
6 disputed the Defendants' tradeline,
7 advising TransUnion that Defendants
8 never responded to his written dispute nor
9 his request for details about the disputed
10 account to demonstrate that he owed
11 Impulse Telecom money.

12 No. 24: On August 20, 2006, Mr. Wilson
13 went to Jared Jewelry to purchase his wife
14 a Rolex watch as a surprise gift and he was
15 denied the 12 month no interest financing
16 deal because of the Defendants'
17 derogatory tradeline on his credit report.
18 He ended up having to have his wife apply
19 for the financing deal, essentially needing
20 to have her involved in buying her own
21 gift.

22 No. 25: As a result of Mr. Wilson
23 disputing the account with the credit
24 bureaus, Defendants received an
25 automated consumer dispute verification
26 ("ACDV") form on its E-Oscar system, on
27 or about August 31, 2006, from one or
28 both of Experian and TransUnion.

No. 26: Defendants responded to back to
Experian and/or TransUnion by (a)
verifying the information it had previously
supplied them regarding the account was
accurate; and (b) did not advise them that
Wilson was disputing the account.

No. 27: Both Experian and TransUnion
received Defendants' responses verifying
the account information and without any
notation that Mr. Wilson was disputing
the account; and subsequently notified
Mr. Wilson that Defendants had verified
the account and, therefore, no changes to
it would be made.

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10 No. 28: In September 2006, Mr. Wilson
11 was attempting to refinance his home to
12 use some of the excess equity in the
13 property and use it for home
14 improvements. Because of the
15 Defendants' derogatory account
16 information in his credit reports, Mr.
17 Wilson could not receive the best rates
18 available to him at that time had he not
19 had the negative tradeline.

20 No. 29: On May 10, 2007, Mr. Wilson filed
21 the instant action, within which, he again
22 reitrates his dispute regarding the subject
23 account. The lawsuit was served on
24 Defendants, through their resident agent
25 on July 6, 2007. Defendants received the
26 actual complaint no later than July 25,
27 2007.

28 No. 30: In August 2007, Mr. Wilson,
disputed the subject account with
Experian and TransUnion a second time.
As a result of Mr. Wilson disputing the
account with the credit bureaus,
Defendants received an automated
consumer dispute verification ("ACDV")
form on its E-Oscar system, on or about
August 31, 2006, from one or both of
Experian and TransUnion.

No. 31: Both Experian and TransUnion
received Defendants' responses again
verifying the account information and
without any notation that Mr. Wilson was
disputing the account; and subsequently
notified Mr. Wilson that Defendants had
verified the account and, therefore, no
changes to it would be made.

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No.32: On February 11, 2008, Mr. Wilson wrote lengthy letters to both Experian and TransUnion explaining his situation and also enclosing the complaint that was filed in this action. The letters were mailed to the CRAs within the next day or two. He received a letter from TransUnion, dated February 19, 2008, stating that it would contact Defendants to advise them of his dispute and would ask Defendants to verify the accuracy of the reported information.

No. 33:

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